

**California Department of Transportation
Native American Advisory Committee
Minutes**

Environmental Subcommittee Meeting
May 23, 2002

In attendance:

Tina Biorn, California DOT, Environmental Analysis, Cultural Studies, HQ
Jody Brown, California DOT, Environmental Analysis, District 3
Dwight Dutshice, State Historic Preservations
Seana Gause, California DOT, Environmental Planner, District 4
Cynthia Gomez, California DOT, Native American Liaison Branch, HQ
Greg King, California DOT, Environmental Analysis, HQ
Cassandra Hensher, California DOT, Environmental Planner, District 10
Aaron Holstine, Transportation Planner, Robinson Rancheria
Meyo Marrufo, Cultural Resources Manager, Robinson Rancheria,
Karen Nissen, California DOT, Environmental Planner
Frank Ross, Cultural Manager, Graton Rancheria,
Jane Perez, California DOT, Senior Transportation Planner, District 10
Jila Priebe, California DOT, Native American Liaison Branch, HQ
Joe Sanchez, Susanville Indian Rancheria
Kathleen Sartorius, California DOT, Native American Liaison, North Region, Planning
Chuck Striplen, Planner, Graton Rancheria,
Irenia Quitiquit, Planner, Robinson Rancheria
Wanda Quitiquit, Robinson Rancheria, Director of Governance,
Kathleen Zahniser, California DOT, Transportation Planner, District 10,
Randy Yonemura

Welcome and introductions were made:

Approval of the Minutes of February 21, 2002

Agenda items:

NAGPRA Compliance Status

Tina handed out a page with information on the composition of the Repatriation Oversight Commission established by the California Native American Graves Protection and Repatriation Act, as well as information on who to contact if interested in submitting names for consideration (attached). She mentioned that of the ten positions on the Commission, six are for representatives from federally recognized tribes, and one will be a representative from a non-federally recognized tribe. Other positions include a representative from state agencies and the California State University system, and one representative each from the University of California and Museums. The Museums have submitted names to the Governor for consideration, and the Native American Heritage

Commission has a nominee from the non-federally recognized tribes in mind, but needs to have a quorum at one of their meetings to vote on that nominee. Tina also, addressed few questions that were asked at the previous meeting. Questions and answers are discussed below:

Q) If the tribe has an appropriate curation site, can it be curated there?

A) Yes. Caltrans would evaluate the appropriateness of any new curation site, tribal or otherwise, using as guides the curation standards outlined in the federal regulations (36CFR79) and in the State Historical Resources Commission's Guidelines for the Curation of Archeological Collections (1993), as applicable.

Q) Who will participate in inventories?

A) Tribal representatives participate in inventories.

Q) Can Caltrans incorporate terms and conditions regarding repositories that are not repatriating human remains or cultural items subject to repatriation?

A) It appears that repositories are repatriating to the extent that NAGPRA, as they see it, requires them to, i.e., to tribes that are federally recognized and to tribes that are determined to be culturally affiliated with the remains and/or cultural items. If a repository is not repatriating, then it is because they have determined that the remains and any cultural items are not affiliated with any federally recognized group or are of such antiquity that they are not affiliated with a present day tribe. Unless the repository is grievously wrong, Caltrans follows their lead. For the repository to repatriate in these cases requires an appeal to the NAGPRA Review Committee for a recommendation. The list of California Indians that the California NAGPRA Repatriation Oversight Committee is to develop will help in regards to repatriation to non-federally recognized tribes, as that list will be of both federally and non-federally recognized tribes that have standing under the California repatriation act. That list does not exist yet. Since the mid-1970s, Caltrans has been complying with the agreement on human remains and associated grave artifacts developed in consultation with the designated most likely descendants, and this usually means reburial of the remains and artifacts near where they were unearthed. Any terms and conditions outlined would be consistent with those agreements.

Q) Provide a listing of repositories that Caltrans curates with.

A) A list was provided (See attachment A)

Q) Look into the position that UC Davis took regarding the Applegate site. (Explain what the position was).

A) UCD (Bob Bettinger and Lisa Dietz) met with Glen Villa, Glen Villa, Jr. and a third individual of the Ione Band of Miwok Indians. Copies of the report on the 1965 excavations by Johnson were provided. The Ione Band has an interest in the remains as

stewards of the Applegate site even though they are not identified as culturally affiliated. UCD position is that the Miwok are not affiliated with the remains since the site appears to date to 1500-2000 years ago, prior to Miwok occupation of the Sierra Nevada. Miwok ancestors occupied the Sacramento-San Joaquin Delta region during this time. Dwight Dutschke noted that Dr. Moratto disagrees and says that the Miwok were in the Sierra Nevada at this time, and that the Ione band will be elevating the request to repatriate the remains recovered from the Applegate to a higher authority.

Q) Provide a list of the repositories that meet the standards required, and provide those standards in the event a tribal repository was interested in contracting with Caltrans for curation.

A) The general viewpoint is that few long time repositories meet all of the federal standards for curation outlined in the 1990 regulations (36CFR79), particularly the call for environmental, i.e., climate, controls. Historically, collections have been taken in by universities or small museum, not by facilities that were created specifically to curate, so meeting all the standards in old facilities may not be feasible. The University of Santa Barbara is believed by the Office of Historic Preservation to be the sole curational facility in California that meets these standards. Caltrans has surveyed the repositories it has collections in and the information on the survey forms would need to be compiled into a comprehensive report in order to give a statement on the general status of these repositories. Most archaeological collections are composed of non-perishable items, and therefore climatic control is not that critical. At minimum, it is expected that the facility keeps the collections in perpetuity, in a secure area, safe from damage from the elements, properly packaged, and accessible to researchers and Native Americans. (Since this meeting, the San Diego Archaeological Collections facility has moved into a new building that is reputed to meet the federal standards).

Q) Identify who participates in identifying inventoried items, sacred items, etc. Call Dr. Johnson at CSUS to determine whom he involved during their inventory.

A) Tribal representatives participate in identifying inventoried items and sacred items. Dr. Johnson said that he sent letters out to tribes that he identified as being potentially culturally affiliated with the human remains and/or associated funerary objects associated with collections housed at CSUS. Once a contract is in place, Dr. Johnson will be providing copies of these letters to Caltrans, and will be sending new letters out to initiate active consultation on five collections associated with Caltrans highway projects.

Q) Status of CSU Sacramento (CSUS) archaeology collections?

A) A contract between Caltrans and CSUS for consultation and repatriation of human remains and associated funerary objects from five sites is pending and will be in place before July 1, 2002. Although Dr. Jerry Johnson is retiring, he is a valuable source of information regarding the collections and he will be involved in this contract. This contract was expected to be initiated earlier in the year but was delayed because Dr. Johnson unexpectedly had sextuple heart bypass surgery in late January. (The contract was signed June 30, 2002).

Q) Can the CSUS work with Caltrans (Tina) to finish agreement, or just give the committee (or Tribes) more information as the status of the agreement?

A) Tina provided a draft of the type of agreement she will have with CSUS that addresses the process to follow to consult and repatriate the remains and any associated funerary objects.

Q) What is consider funerary remains (if no agreement was set prior to excavation?)

Human remains and objects intentionally buried with the remains. The designated most likely descendant and Caltrans are to work out an agreement as to the treatment and disposition of the remains and objects, and therefore work out what are funerary remains if it is not obvious.

Curation:

The subject of curation will be a discussion at a future environmental subcommittee meeting. Previously identified as concerns by subcommittee are:

Action items:

1. Tribe's communities would like to participate and have a role in selecting who does curation.
2. The subcommittee would like to know the University of California, Davis' (UCD) curation process.
3. Tribes would like to develop a Curation Committee.
4. Tribes can and some already have curation facilities, therefore, they like the remains and materials given to them, rather to the Universities.
5. Tribes have concerns regarding hazardous materials that can be found in the Universities facilities that the remains and materials are kept.

A discussion on monitors

Tina Biorn made a brief presentation on the history of how monitoring became part of an environmental process. However, due to lack of time and request from the members the discussion regarding monitors was tabled for the next Environmental Subcommittee meeting.

Action items(s)

- Tina to provide the committee with a copy of overview of the history.

Discussion on the "Statutory Authority" of the Department on identifying and protection of cultural resources within and near the Department's right-of-way.

A copy of the revised Memo of March 4, 2002 to the Native American Advisory Committee (NAAC) Environmental Subcommittee from Ron Helgeson regarding IGR/Encroachment Permit Policies was distributed and discussed. The Memo was written to

clarify specific questions presented by the members of the Environmental Subcommittee at the previous meetings. *A copy of the Memo is attached and available for review.*

The Committee discussed the importance of protection of cultural sites and options of ways to keep the Department and other agencies aware of the sites boundaries. It was suggested that the Tribes provide the Department and other agencies with a contact list and a map if possible that shows the boundaries of the interested area. It was also mentioned that it might be difficult for some of the tribes to produce a map due to lack of resources.

Question was asked and discuss regarding how and when the Department or other agencies can contact landless Tribes. It was suggested that Districts should contact responsible federal or state agencies such as the Native American Heritage Commission that keep a listing of Tribes and Most Likely Descendants (MLD) along with a contact list of the Tribal government. However, the Department needs to do better outreach in contacting the federally recognized Tribes as well as non-federally recognized Tribes.

Joe Sanchez from Susanville Indian Rancheria brought up the issues of tribal conflict in regard to protection of cultural resource sites. The Susanville Indian Rancheria consists of more than one Tribe. The ancestral area of the Tribes are far greater than the Rancheria itself. The Tribe's governing body may not agree with the contact person that agencies are utilizing for consultation and monitoring of cultural sites off the Rancheria. The issue arises from exactly who should be the point of contact, consulted and have the authority especially if mitigations are necessary to protect a site. Meyo, Robinson Rancheria, mentioned that the Tribal governments worked hard and long to keep their sovereignty statues therefore, it is up to the tribe to make decision on protection of cultural resources in their ancestral land. She gave an example as how her Tribe has developed a GIS map and a contact list that can be provided to any agencies that may have a project in the area. Therefore, in her area the Tribe has a priority over any other interested parties for consultation and mitigations regarding protection of cultural sites. However, the Subcommittee recognizes the importance of working with other groups or interested parties to protection of cultural resources.

The subcommittee requested a policy be developed to clarify the Department's obligations, roles and responsibilities when consulting with Tribal Governments and other interested parties, and selecting monitors.

Action item(s)

- Districts make recommendation to the Intergovernmental Review IGR Program to provide a guideline in regard to review of the environmental documents especially in regard to cultural resources findings, and the importance of the early contact and consultation with the Tribes or interested parties.
- Districts and Headquarter archaeologist to write a letter of support to the management regarding becoming more proactive.

- Revision of the March 4, 2002 Memorandum of “IGR/Encroachment Permit Policies.” To embody “Tribe” and Tribal review at the paragraph 4:

“Since Caltrans is identified as having expertise in the area of “historic and archaeological sites”, it is departmental policy to notify lead and/or responsible agencies, Tribes/and interested parties during the CEQA review process when district IGR coordinators and functional reviewers discover a potential impact on resources outside of the Department’s jurisdiction.”

- Need for technical training of the reviewing staff and advocacy for protection of cultural resources.
- Development of a Departments’ policy in regard to protection of cultural resources outside of the Departments’ right-of-way.
- A request to the NAAC to develop or recommend language for a policy to clarify the following issues:
- During the 106 consultation process, when the Tribal Governments are consulted and interested parties are notified, and if both parties do not agree on the mitigation measures, does the Tribal Governments have more authority or priority to make the final determination for mitigation measures? This would include areas off that reservation recognized as ancestral territory by the Tribe.
- If monitors are required on a project, does the Department have an obligation to utilized monitors approved by the Tribal Government, or can any Native American with Tribal affiliation be selected as a monitor without the approval of the Tribal Government?

Discussion on possible legislations (State or Federal), and new polices regarding protection of cultural resources & Legislative Reports

Copies of two current proposed legislations were distributed to the committee members for their review and discussion. 1) Senate Bill 1816, introduced by Senator Chesbro, this proposed bill would establish the Native American Historic Resources Protection Act, This bill would establish the Native American Historic Resource Protection Act, which would prohibit a provide that any person from knowingly and willfully excavating upon, removing, destroying, injuring, or defacing who excavates upon, removes, destroys, injures, or defaces a Native American historic, cultural, or sacred site, including any historic or prehistoric ruins, burial ground, archaeological site, any inscriptions made by Native Americans at such a site, any Native American rock art, or any archaeological or historic feature situated on private land or within any public park or place, and, upon conviction is guilty of a misdemeanor.

2) Proposed Senate Bill 1828, Burton and Chesbro. Historical resources: affected Native American sacred sites: California Environmental Quality Act.

This bill requires a mandatory finding of significance" if a proposed project will adversely affect a Native American sacred site and prohibits approval by a public agency of the proposed project unless the tribe accepts mitigation measures by the lead agency to offset any adverse impacts. Requires the Office of Planning and Research (OPR) to prepare and develop guidelines for public agencies to implement CEQA and submit them to the Secretary of the Resources Agency for certification and adoption

Action item(s)

None

Wrap-up

The next meeting was scheduled for August 22, 2002 at the Office of the Federated Indians of Graton Rancheria. Jila Priebe, NALB is the coordinator for the Environmental subcommittee meetings.

Recommended Agenda item(s) for August 22nd meeting

Contracting
Copy of Environmental manual
Copy of PARR
Discussion of monitors

Meeting Adjourned.

Attachments: A

REPOSITORIES THAT CURATE CALTRANS COLLECTIONS

- 1. CSU Chico**
- 2. CSU Fullerton**
- 3. CSU Long Beach**
- 4. CSU Sacramento**
- 5. CSU Bakersfield**
- 6. Department of Parks and Recreation**
- 7. Imperial Valley College Desert Museum**
- 8. Kern Valley Museum**
- 9. LA County Museum of Natural History**
- 10. Orange County Natural History Museum**
- 11. Redding Museum of Art and History**
- 12. San Bernardino County Museum**
- 13. San Diego Archaeological Center**
- 14. San Diego State University**
- 15. San Francisco State University**
- 16. San Luis Obispo County Archaeological Society**
- 17. Santa Barbara Museum of Natural History**
- 18. Shasta College**
- 19. Sierra Mono Museum**
- 20. Sonoma State University**
- 21. UC Davis**
- 22. UCLA**
- 23. UC Riverside**
- 24. UC Santa Barbara**
- 25. UC Santa Cruz**
- 26. University of Nevada Reno**
- 27. Ventura County Museum**

This list does not include collections created by Caltrans project activities but owned by other agencies. Repositories which contain these collections include: Angeles National Forest, Cleveland National Forest, El Dorado National Forest, El Pueblo City Park, Fort Yuma Indian Reservation, Inyo National Forest, and the Stanislaus National Forest (Tuolumne County History Museum).

Attachment B

Monitoring:

The monitor on archaeological excavations and during construction serves as a liaison between Caltrans and the Indian community. Monitor duties are distinguished from the act of consultation for identifying resources or other activities. There is no legal mandate to have monitors, although there is mandates to consult with Indian tribes on cultural resources at least by Federal law.

The concept of monitoring was initiated in the mid 1970s by Steve Rios, then Executive Secretary of the Native American Heritage Commission, and Dwight Dutschke, and the intent was to facilitate communication between the agencies and the Native Americans, so that the agencies could make informed decisions. Also, since the elders were the ones with the expertise & knowledge, this would elevate them in the community. An underlying principle of the California Environmental Quality Act is that the agencies needed to gather information to make an informed decision. The problem was determining when to bring them in-too early can't make a decision, too late, there is conflict. But essentially the monitor would need something to bring to the table, either have the expertise and knowledge or know where to go to get it. The monitor either would be the person with the knowledge or would have access to that knowledge. Sounds like what today we mean by consultation. But over the years, monitoring has evolved into something else, and for the longest time having a monitor, i.e., having someone, for example, on an archaeological excavation, was confused with consultation.

So the concept of monitors has moved away from that initial concept. But we need to incorporate more of that initial concept into monitoring today.

The NAHC has guidelines for monitors that Caltrans will use. A problem that has been expressed many times over is we need training for monitors, and we will be looking for \$\$s or ways to provide such training. Our environmental division does not have ready access to non-project related \$\$s, so we need to go elsewhere. Many of our districts have expressed interest in doing something along these lines, and myself and others have talked to Janet Eidsness, Chair, Native American Committee, Society for California Archaeology, who has put on such training in collaboration with tribes.

Our policy however is to request monitors during archaeological excavations and during construction near known sites or if this is a high likelihood that sites may be buried. We also do not hire more monitors than is needed for the job, and if we are within overlapping territories, we have monitors from each group, and they would share that position if the job only called for one monitor.